

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF
TOXIC SUBSTANCES CONTROL,

Plaintiff,

v.

CHEVRON ORONITE CO. LLC, et al.,

Defendants.

No. 2:21-cv-01737-DJC-JDP

ORDER

This action is one of two Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") enforcement actions in this Court filed by the California Department of Toxic Substances Control ("DTSC") and the Toxic Substances Control Account ("TSCA")¹ related to former landfill sites managed by the IT Environmental Liquidating Trust ("ITELT").² Before the Court is a Motion for

¹ Plaintiff TSCA is an account within the State of California General Fund that may be used by the DTSC to fund response costs. (Pl's Mot. at 2.) Plaintiff TSCA must be a party to this action under California law, even though Plaintiff DTSC appears to be the main plaintiff in this action. (*Id.*) Plaintiff DTSC and Plaintiff TSCA will be jointly referred to as "Plaintiffs" for purposes of this order.

² The ITELT was established to oversee the long-term post-closure operation and maintenance of several landfill sites following the bankruptcy of IT Corporation, the former owner and operator of these facilities. (First Am. Compl. (ECF No. 38) ¶ 31.) The other CERCLA suit filed by the Plaintiffs and pending before this Court is *California Department of Toxic Substances Control v. Exxon Mobil Corporation, et al.*, No. 2:21-cv-01737-DJC-JDP. Plaintiffs have filed a Motion for Approval and Entry of Consent Decree in that action as well. This order and an order in the other ITELT case will be issued simultaneously.

1 Approval and Entry of a Consent Decree entered into by DTSC and named
2 Defendants who disposed of hazardous waste at a landfill located in Rio Hills,
3 California. After a careful review, the Court finds that the Consent Decree is fair and
4 reasonable, and GRANTS DTSC's Motion for Approval and Entry.

5 **I. Background**

6 **A. Factual Background**

7 Plaintiffs filed this action seeking declaratory relief and the recovery of
8 "response costs" under 42 U.S.C. § 9607(a) of CERCLA in connection with the prior
9 and potential future releases of hazardous substances at the Montezuma Hills Facility.
10 (Pl's Mot. (ECF No. 43) at 1.) The Montezuma Hills Facility is a "former hazardous
11 waste and solid waste landfill" located in Rio Vista, California that closed in 1986. (*Id.*
12 at 3.) The Montezuma Hills Facility "managed and disposed of" hazardous waste
13 between at least 1979 and 1986. (*Id.* at 3.) Plaintiffs claim the 17 Defendants to this
14 action and their affiliates disposed of hazardous waste at the Montezuma Hills Facility.
15 (*Id.* at 2.) Plaintiffs claim that the management of the hazardous waste at this location
16 "resulted in releases of hazardous substances that are present in the soil, soil vapor,
17 and groundwater at the [Montezuma Hills] Facility." (*Id.* at 3.) A certification of the
18 Montezuma Hills Facility's closure was accepted by the DTSC on March 18, 1992. (*Id.*)

19 Until May 1, 2004, the Montezuma Hills Facility was operated by the IT
20 Corporation. (*Id.*) After the IT Corporation underwent bankruptcy, the ITELT was
21 created to act as operator of the Montezuma Facility and provide ongoing oversight of
22 the post-closure operations and maintenance. (*Id.*) ITELT's post-closure
23 responsibilities included "routine inspections, maintenance and compliance activities,
24 recovery and management of groundwater, leachate, and soil vapor, long-term
25 groundwater, leachate and soil vapor monitoring, soil vapor and water quality
26 sampling and reporting, and response to potential and immediate threats, newly
27 identified releases, and emergency contingencies such as floods, fires, and

28 ////

1 earthquakes." (*Id.* at 4.) ITELT was also required to provide adequate financial
2 assurances for these operations. (*Id.*)

3 On February 29, 2016, Plaintiff DTSC issued a "summary of violations" to ITELT
4 "stat[ing], among other things, that the Facility was in violation of the financial
5 assurance requirements because ITELT's financial assurance was underfunded and
6 less than the total post-closure cost estimate." (*Id.*) ITELT responded by informing the
7 DTSC that it did not have assets or mechanisms to get those assets to meet the
8 financial assurance requirements. (*Id.*) Plaintiff DTSC determined that ITELT's inability
9 to meet these requirements would prevent "(a) actions ensuring the protectiveness of
10 the landfill covers, (b) collection and treatment of groundwater and leachate, and (c)
11 monitoring of the surrounding environment for impacts from hazardous waste and
12 solid waste left in place at the [Montezuma Hills] Facility[,]” and informed ITELT and
13 parties who had previously disposed of waste at the Montezuma Hills Facility
14 (including Defendants) "that termination of [post-closure] activities would pose an
15 imminent and substantial endangerment to human health, the public, and the
16 environment." (*Id.*) Plaintiff DTSC then engaged in response actions that, as of
17 December 31, 2022, allegedly cost DTSC \$816,259.03. (*Id.* at 5.)

18 In filing this action Plaintiffs seeks past costs for Plaintiff DTSC's response at the
19 Montezuma Hills Facility as well as a declaratory judgment that Defendants are liable³
20 for future costs Plaintiff DTSC will incur addressing the release of or threatened
21 release of hazardous waste. (*Id.* at 6.) Pursuant to a settlement between the Parties,
22 Plaintiffs now request the Court approve and enter the Proposed Consent Decree
23 previously lodged with the Court. (Proposed Consent Decree (ECF No. 39-1).) The
24 Defendants jointly do not oppose the present motion (Notice of Pl's Mot (ECF No. 43)
25 at 2-3) and are signatories to the Proposed Consent Decree (Pl's Mot. at 1 n.1).

26

27 ³ Under CERCLA, parties that are responsible for disposing hazardous waste are generally jointly and
28 severally liable for the costs associated with the management of that waste. *Arizona v. City of Tucson*,
761 F.3d 1005, 1011 (9th Cir. 2014).

1 **B. Proposed Consent Decree**

2 The Proposed Consent Decree has been agreed to and signed by all parties.
 3 (See Proposed Consent Decree at 40-57.) For purposes of the Consent Decree, DTSC
 4 estimated that post-closure activities will amount to \$29,564,801 over the next 500
 5 years. (Pl's Mot. at 5.) Under the terms of the agreement, the "Settling Defendants"
 6 are split into two groups: the Participating Parties and the Cashout Parties, each with a
 7 different set of obligations. (Proposed Consent Decree at 9, 14.)

8 The Participating Parties will be required to establish a Qualified Settlement
 9 Fund ("QSF") which shall be responsible for funding the future costs of operating the
 10 Montezuma Hills Facility. (*Id.* at 9.) A Non-Qualified Settlement Fund ("Non-QSF") will
 11 also be established by the Participating Parties. (Qualified Settlement Fund
 12 Agreement (ECF No. 39-1, App. B) at 2-3.) Where the QSF is intended to hold
 13 settlement funds required by the Proposed Consent Decree, the Non-QSF is
 14 designated "to hold and disburse any Settlement Funds received in connection with
 15 the Consent Decree that cannot be placed into the QSF, including, but not limited to,
 16 revenue generated at the Facility if applicable, together with any investment returns
 17 on such Non-QSF funds." (*Id.*) The QSF and Non-QSF will provide a continual source
 18 of funding for the ongoing operation of the Montezuma Hills Facility. (Pl's Mot. at 9-
 19 10.) The principal of the QSF – \$8,197,543 – will remain constant over the duration of
 20 the consent decree and any return on the investment of the principal funds will be
 21 used to pay the annual expenses of the Montezuma Hills Facility. (Pl's Mot. at 8-9.)

22 The Participating Parties, which have collectively contributed the majority of the
 23 waste, will be required to make an initial payment into the QSF of \$1,000,000.
 24 (Proposed Consent Decree at 11.) The Participating Parties will also be responsible
 25 for making additional payments into the QSF "in the following circumstances: (1) if the
 26 amount of the non-principal in the QSF plus the cumulative net return on investment is
 27 less than the annual expenses budgeted for the Facility for the upcoming fiscal year;
 28 (2) if unanticipated expenses or contingencies occur and available amounts in the QSF

1 or Non-QSF are insufficient to pay such costs; (3) if principal was used to pay for
2 contingencies in the prior fiscal year; or (4) if the amount of principal is less than the
3 cumulative amount of the settlement funds over a five year period." (Pl's Mot. at 9; see
4 Proposed Consent Decree at 12-13.) The Participating Parties will also be required to
5 pay "no less than \$388,798.51" of Plaintiff DTSC's past response costs as well as any
6 future response costs incurred by Plaintiff DTSC that are "(a) associated with any work
7 takeover initiated by DTSC, (b) incurred to address alleged noncompliance with the
8 Consent Decree, or (c) incurred in connection with the pursuit of non-settling
9 potentially responsible parties." (Pl's Mot. at 9-10; Proposed Consent Decree at 12-
10 13.) Finally, the Proposed Consent Decree imposes a number of ongoing obligations
11 on the Participating Parties including "(1) assure a facility operator is in place to
12 perform the Facility work, (2) demonstrate adequate and available funding for the
13 financial assurance required by California Code of Regulations title 22, § 66264.145 or
14 any then-existing regulations (i) no later than one-hundred- twenty days after the
15 Consent Decree effective date, and (ii) when the financial assurance amount is
16 reevaluated by DTSC, and (3) assure that an appropriate settlement funds manager is
17 in place to manage and administer the QSF and Non-QSF." (Pl's Mot. at 10-11;
18 Proposed Consent Decree at 18-19.)

19 The Cashout Parties' obligations are comparatively simple: based on a
20 "Cashout Schedule" set by the Proposed Consent Decree, each of the Cashout Parties
21 will pay an amount into the QSF. (Proposed Consent Decree at 11; see Payment
22 Calculation of Cashout Parties (ECF No. 39-1, App. C-1) at 1.) The total amount to be
23 paid into the QSF by the Cashout Parties will be \$7,197,543. (Pl's Mot. at 11.)

24 After agreeing to the terms of the Consent Decree, DTSC invited public opinion
25 by publishing a notice of Proposed Consent Decree on its website and in multiple
26 newspapers, and making the complete Proposed Consent Decree available to the
27 public "at the DTSC Regional Center File Room in Sacramento, California and on
28 DTSC's online EnviroStor database." (*Id.* at 13-14.) DTSC has received no comments,

1 much less any opposition, from any member of the public or any other potentially
2 responsible party. (*Id.*)

3 Plaintiffs now move the Court for approval and entry of the Proposed Consent
4 Decree. (Mot. (ECF No 43).) None of the Defendants have opposed the Motion. At
5 the Court's own request, the Parties filed a supplemental brief providing more
6 information about the financial commitment and financial risks the Participating
7 Parties would be assuming. (See Supplemental Brief (ECF No. 46).) The matter was
8 submitted without oral argument pursuant to Local Rule 230(g).

9 **II. Legal Standard**

10 "In order to approve a CERCLA consent decree, a district court must conclude
11 that the agreement is procedurally and substantively 'fair, reasonable, and consistent
12 with CERCLA's objectives.'" *Arizona v. City of Tucson*, 761 F.3d 1005, 1011-12 (9th Cir.
13 2014) (quoting *United States v. Montrose Chem. Corp. of Cal.*, 50 F.3d 741, 748 (9th
14 Cir.1995)). Once a consent decree is entered, the settling parties are protected from
15 contribution claims from non-settling parties. *United States v. Aerojet Gen. Corp.*, 606
16 F.3d 1142, 1147 (9th Cir. 2010); 42 U.S.C. § 9613. Thus, a district court has an
17 "obligation to independently scrutinize the terms of [the agreement]," *Montrose*, 50
18 F.3d at 748, and "gauge the adequacy of settlement amounts to be paid by settling
19 [parties]." *Arizona*, 761, F.3d at 1012 (quoting *States v. Charter Int'l Oil Co.*, 83 F.3d
20 510, 515 (1st Cir.1996)). While federal agencies are afforded significant deference, a
21 court may only grant "some deference" to a state agency's expertise as to the
22 environmental issues. *Id.* at 1014-15. A state agency is not entitled to any deference
23 as to its interpretation of federal law or its finding that the consent decree is fair and
24 reasonable. *Id.*

25 **III. Discussion**

26 **A. Procedural Fairness**

27 "To measure procedural fairness, a court should ordinarily look to the
28 negotiation process and attempt to gauge its candor, openness, and bargaining

1 balance." *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 86 (1st Cir. 1990);
 2 accord *California Dep't of Toxic Substances Control v. Allen's Formal Wear, Inc.*, No.
 3 CV-13-5069-GHK-JCG, 2016 WL 5936888, at *2 (C.D. Cal. Aug. 12, 2016); *Ariz. ex rel.*
 4 *Woods v. Nucor Corp.*, 825 F. Supp. 1452, 1456 (D. Ariz. 1992). The court may
 5 consider whether the settling parties contributed the bulk of the waste, the
 6 opportunity of the parties to participate in arm's length negotiations, whether the
 7 parties were represented by counsel, and whether any of the defendants, including
 8 non-settling defendants, objected to the consent decree. See *Dep't of Toxic*
 9 *Substance Control v. Technichem, Inc.*, No. 12-cv-5845-CRB, 2013 WL 3856386, at *3
 10 (N.D. Cal. July 24, 2013); *California Dep't of Toxic Substances Control v. Jim Dobbas,*
 11 *Inc.*, No. 2:14-595-WBS-EFB, 2015 WL 7188230, at *2 (E.D. Cal. Nov. 16, 2015); *United*
 12 *States v. Andruss Fam. Tr.*, No. 07-cv-6873-ABC-RC, 2011 WL 1334391, at *2 (C.D. Cal.
 13 Apr. 7, 2011); *California Dep't of Toxic Substances Control v. Allen's Formal Wear, Inc.*,
 14 No. 13-cv-5069-GHK-JCG, 2016 WL 5936888, at *2 (C.D. Cal. Aug. 12, 2016). Where
 15 the decree results from "'good faith, arms-length negotiations,' it is 'presumptively
 16 valid and [an] objecting party has a heavy burden of demonstrating the decree is
 17 unreasonable.'" See *Technichem, Inc.*, 2013 WL 3856386, at *2 (citing *United States v.*
 18 *Oregon*, 913 F.2d 576, 581 (9th Cir. 1990)).

19 Here, the Proposed Consent Decree appears procedurally fair. The settling
 20 Defendants which are signatories to the Proposed Consent Decree have contributed
 21 the majority of the waste at the Facility, around 88.78%, meaning that most of the
 22 potentially liable parties participated in the settlement discussions and the agreement.
 23 (Mot. at 2.) All parties are represented by experienced counsel.⁴ Negotiations
 24 between the Parties purportedly lasted years and were conducted at arm's length. (*Id.*

25
 26 ⁴ Plaintiff DTSC is experienced at litigating CERCLA claims and negotiating settlements in such cases.
 27 See e.g., *California Department of Toxic Substances Control v. NL Industries Inc.*, No. 2:20-cv-11293-
 28 SVW-JPR, 2023 WL 6194098 (C.D. Cal. Aug 18, 2023); *California Department of Toxic Substances*
Control v. Allen's Formal Wear, Inc., No. 13-cv-5069-GHK, 2016 WL 5936888 (C.D. Cal. Aug. 12, 2016).
 The 17 named Defendants include numerous large corporate entities that are individually represented
 by experienced attorneys and firms.

1 at 15.) Moreover, Plaintiffs also took active steps to ensure the procedural fairness of
2 the Proposed Consent Decree to non-parties and the general public by publishing a
3 notice about the Proposed Consent Decree "in the California Regulatory Notice
4 Register and in three different newspapers." (*Id.*; see Pl's Ex. A (ECF No. 43-2); Pl's Ex.
5 B (ECF No. 43-3); Pl's Ex. C (ECF No. 43-4).) These postings all invited comment on
6 the Proposed Consent Decree, but Plaintiffs did not receive any comments. (Pl's Mot.
7 at 15.) Similarly, none of the parties to this action have objected to the Proposed
8 Consent Decree, in part or in full. Therefore, the Proposed Consent Decree appears
9 to have involved good faith, arms-length negotiations that resulted in a procedurally
10 fair agreement. See *Technichem, Inc.*, 2013 WL 3856386, at *2.

11 **B. Substantive Fairness and Reasonableness**

12 To determine whether the terms of a consent decree are substantively fair and
13 reasonable, the court must assess how the total costs are apportioned among the
14 defendants while considering other factors like litigation risk and time saving. See
15 *Montrose*, 50 F.3d at 747 ("fair' and 'reasonable' are, by their very nature, comparative
16 terms."). However, apportionment does not necessarily need to be exactly
17 proportional to fault. *United States v. Coeur d'Alenes Co.*, 767 F.3d 873, 877 (9th Cir.
18 2014) ("[T]he potential for disproportionate liability is an integral and purposeful
19 component of CERCLA"). The Court's role is not to determine "whether the settlement
20 is one which the court itself might have fashioned, or considers as ideal. . ." *Cannons*,
21 899 F.2d at 84. The apportionment must only be fair and reasonable in light of the
22 specific circumstances and be "roughly correlated with[] some acceptable measure of
23 comparative fault." *Id.* at 87; *Coeur d'Alenes Co.*, 767 F.3d at 877. For example, it
24 may be fair and reasonable for an earlier settler to receive more favorable terms,
25 including a disproportionate share of liability, in order to encourage settlement and
26 avoid litigation costs. Because a later settler or non-settler would continue to be
27 jointly and severally liable for the remaining costs, such a scheme would not be unfair
28 or unreasonable to the state. *Cannons*, 899 F.2d at 92.

1 Here, the Proposed Consent Decree appears to establish a substantively fair
2 and reasonable apportionment of costs and liability, taking into account the trade-offs
3 and risks undertaken by both the Participating Parties and the Cashout Parties. The
4 Cashout Parties will contribute roughly twice their share of liability: collectively they
5 are paying \$7,197,543 or roughly 24% of the estimated future operation costs, despite
6 only contributing about 12% of the waste. (Pl's Mot. at 16.) The Cashout Parties have
7 agreed to pay a premium in exchange for a full release from liability and finality. (See
8 *id.*; Proposed Consent Decree at 23.) Unlike the Participating Parties, the Cashout
9 parties are not assuming the risk for future response costs. The Cashout Parties'
10 proportional share of the DTSC response costs, without a premium, is also factored
11 into the total amount each party will pay. (Pl's Mot. at 11.)

12 The contribution from the Participating Parties appears at first blush to be
13 comparatively low: the Participating Parties have contributed 76% of the waste, and
14 their proportional share is therefore equal to \$22,469,248.76 based on the estimated
15 costs, but they are paying only \$1 million upfront, or 3% of the total estimated costs.
16 (*Id.* at 16.) However, the ongoing responsibility for managing the Montezuma Hills
17 Facility and the financial risk in assuming response costs accounts for this significant
18 discount in initial financial responsibility. (*Id.* at 7-10; Pl's Suppl. Br. (ECF No. 46) at 2-
19 8.) The Participating Parties will be responsible for all future work required by the
20 prior post-closure permit, including non-routine work; all future administrative fees,
21 permit fees, and taxes; fees for the administration of the Qualified and Non-Qualified
22 Settlement Funds; and any earthquake response costs over \$3 million. (Pl's Suppl. Br.
23 at 2-3, 6.) The Participating Parties will be responsible for demonstrating financial
24 assurances of \$5,388,337 (or more if subsequently required by state law) which are
25 separate from the funds in the QSF. (*Id.* at 2-3.) The Participating Parties will also be
26 responsible for replenishing the principal balance in the QSF if the funds are used.
27 (*Id.*) Specifically, Plaintiffs estimate that the annual facility costs will be roughly
28 \$232,330 and that the return on investment from the QSF will only account for an

1 estimated \$68,059.⁵ (*Id.* at 5.) The Participating Parties are thus expected to
2 contribute an estimated \$164,271 annually, or approximately 70% of yearly costs. (*Id.*
3 at 5.)

4 Based on the estimates, the Participating Parties are expected to pay
5 approximately 70% of the future costs which is, as noted by Plaintiffs, "roughly
6 correlated to the Participating Parties' collective 76.21% contribution of the total
7 tonnage disposed of at the [Montezuma] Facility." (*Id.* at 5-6.) The roughly 6%
8 reduction in contribution is accounted for based on the ongoing and open-ended
9 financial responsibilities of the Participating Parties as well as the risks the Participating
10 Parties undertake via the Proposed Consent Decree. Parties who assume open-ended
11 financial and legal risks are often entitled to a discount whereas those who assume no
12 ongoing responsibilities may be required to pay a premium. See *Cannons*, 899 F.2d
13 at 88 ("Common sense suggests that a [participating party's] assumption of open-
14 ended risks may merit a discount on comparative fault, while obtaining a complete
15 release from uncertain future liability may call for a premium." (citations omitted)).
16 Because the Participating Parties are assuming responsibility of managing the future
17 post-closure operations of the Facility and are assuming the risk of future responses
18 which may occur more frequently or be more costly than anticipated, the significant
19 discount in the initial payment, and the discount in yearly costs, are fair and
20 reasonable.

21 As one example of the ongoing responsibilities and financial risks faced by the
22 Participating Parties, Plaintiffs note that none of the cost estimates include costs for
23 "contingencies" such as natural disasters or "new releases of contaminants" from the
24 Montezuma Hills Facility. (Pl.'s Suppl. Br. at 6-7.) These are costs that would be wholly
25 taken on by the Participating Parties under the Proposed Consent Decree. (*Id.*)
26

27 ⁵ As noted by Plaintiffs, these costs and returns are subject to the effects of inflation and/or deflation.
28 (Pl.'s Suppl. Br. at 9-10.) Plaintiffs appear to have accounted for these effects to whatever degree
possible, but these numbers remain estimates and the actual costs and returns may differ.

1 Plaintiffs also note that costs which are considered "expenses" including the cost to
2 administer the QSF, "costs to acquire financial assurance mechanisms," and others,
3 are also not included in the settlement cost estimates. (*Id.* at 6.) If the settlement
4 funds are unable to pay for these expenses, the Participating Parties would also be
5 expected to bear those costs. (*Id.*)

6 In addition, the Participating Parties will reimburse nearly half of the past
7 response costs incurred by DTSC, collectively \$388,798.51. (Mot. at 10.) Although
8 DTSC will not be recovering the full costs, it is reasonable and fair for DTSC to settle
9 for a lower amount in order to avoid further litigation. Moreover, DTSC may in the
10 future collect the balance of response costs from the remaining waste contributors
11 who are not parties to this agreement. (*Id.* at 12 -13.) Any non-settling party will be
12 afforded similar settlement terms as the Cashout Parties, making the agreement fair to
13 non-settling parties as well. Importantly, if adopted, the Proposed Consent Decree
14 will obviate the need for future DTSC response actions and future litigation over this
15 Facility.

16 On the whole, taking into account the level of risk assumed and trade-offs
17 made by all Parties, the Proposed Consent Decree appears substantively fair and
18 reasonable based on the apportionment of the costs to the parties and the rough
19 correlation of those costs to the comparative fault of the parties.

20 **C. Consistency with CERCLA Objectives**

21 Finally, a consent decree must also be consistent with the objective of CERCLA.
22 The objectives of CERCLA are to (1) "ensure the prompt and effective cleanup of
23 waste disposal sites," (2) "assure that parties responsible for hazardous substances
24 [bear] the cost of remedying the conditions they created," and (3) "foster settlement
25 through its system of incentives and without unnecessarily further complicating
26 already complicated litigation." *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710
27 F.3d 946, 968, 971 (9th Cir. 2013).

28 ////

1 The agreement would create a fund to support the ongoing operation of the
2 Montezuma Hills Facility and ensure that funds are readily available for prompt
3 response to any releases or threatened releases from the Facility moving forward.
4 (Proposed Consent Decree at 11.) It also places clear responsibility for guaranteeing
5 the operations of the Montezuma Hills Facility with the Participating Parties so as to
6 ensure that these efforts do not lapse. (*Id.* at 10-14.)

7 The Proposed Consent Decree also ensures contribution from all of the
8 Defendants and that such contribution will fully satisfy the costs of remedying the
9 conditions at the Montezuma Hills Facility. (Pl's Mot. at 8-11.) The Cashout Parties will
10 make significant financial contributions to this account, and the Participating Parties,
11 which have contributed the majority of the waste, will ensure the account is
12 replenished and cover future operation costs. (*Id.* at 9, 11.) If DTSC undertakes any
13 future response actions, it will be reimbursed through the QSF. (*Id.* at 9-10.)

14 While the DTSC may not be fully reimbursed for past costs under the
15 agreement as this depends on the funds available in the QSF and non-QSF, the
16 agreement does provide that the DTSC will receive some reimbursement for those
17 past costs and ensures that any future costs will be funded by the parties. The
18 Proposed Consent Decree also helps the parties to avoid complicated litigation that
19 would be undoubtedly lengthy and costly given the 17 parties, along with their
20 affiliates, that are involved in this action. In addition, as part of the Consent Decree,
21 the Defendants have agreed to dismiss a writ action filed against the DTSC for other
22 administrative actions related to the Facility. (Proposed Consent Decree at 2-3, 33.)
23 The objectives of CERCLA are satisfied by the entry of a consent decree, signed and
24 agreed to by all parties, that resolves this action without the need for further complex
25 litigation.

26 Accordingly, approval of the Proposed Consent Decree satisfies the objectives
27 of CERCLA. See *Chubb Custom Ins. Co.*, 710 F.3d at 968, 971.

28 ////

1 **IV. Conclusion**

2 For the above reasons, IT IS HEREBY ORDERED that the Motion for Approval
3 and Entry of Consent Decree (ECF No. 43) is GRANTED, and the Consent Decree is
4 APPROVED.

5 IT IS SO ORDERED.

6 Dated: February 14, 2024


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

13 DJC2 – DTSC21cv01737.consentdecree